IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7083 of 1992

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RUKIBEN NAROTTAMBHAI VITTHALBHAI - Petitioner(s)
Versus
COMPETENT AUTHORITY & 1 - Respondent(s)

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Appearance :
MR RN SHAH for Petitioner
MR UR BHATT, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 10/04/2006

ORAL JUDGMENT

1.By this petition under Article 227 of the Constitution of India, the petitioner challenges the order dated 29th June, 1992 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN-V-S-327/88, order dated 6th June, 1988 passed by the Deputy Collector, Olpad Division, Surat in Ceiling Appeal No.89/1987 as well as the order dated 11th May 1987 passed by the Additional Mamlatdar & Agriculture Tribunal, Ceiling, Kamrej in Ceiling Case No.37/1983, Exhibit “A”, “B” and “C” respectively.

2.The petitioner – Rukiben Narottambhai Vitthalbhai, resident of Navagam, Taluka Kamrej was holding certain agricultural lands (hereinafter referred to as “the subject lands”). The petitioner had five daughters and a minor son. It appears that, on the basis of a canal certificate issued in 1977 as well as canal certificate received in 1984, it was found that the petitioner was holding land equivalent to 50 acres 20 gunthas of jirayat land. The concerned authorities under the Gujarat Agricultural Lands (Ceiling) Act, 1960 (hereinafter referred to as “the Act”) were of

the opinion that the petitioner was holding lands in excess of the ceiling limit, hence, proceedings under the Act were initiated in respect of the lands held by the petitioner.

3.By an order dated 24th March, 1981, the Mamlatdar & Agriculture Lands Tribunal (Ceiling), Kamrej (hereinafter referred to as “the Mamlatdar & ALT) had held 6 acres 13 gunthas of lands to be surplus. The Deputy Collector, Olpad Division, Surat took the aforesaid order in revision in the exercise of powers under Section 37 of the Act. By an order dated 15th September, 1981, the Deputy Collector, Olpad, remanded the matter to the Mamlatdar & ALT. Pursuant to the order of remand, the Mamlatdar & ALT declared the same area of land to be surplus, as held in the earlier order dated 24th March, 1981. The said order was again taken in revision under Section 37 of the Act, and by an order dated 1st January, 1983, the matter was again remanded to the Mamlatdar & ALT. Pursuant to the order of remand, the Additional Mamlatdar & Agriculture Land Tribunal, Ceiling, Kamrej, by an order dated 22nd September, 1986, held that the petitioner – land holder is not holding any surplus land, and accordingly, ordered that the

notice be filed.

4.The aforesaid order dated 22nd September, 1986 was again taken in revision by the Deputy Collector, Land Reforms, Surat, who by an order dated 27th February 1987, set aside the order of the Mamlatdar & ALT on the ground that as per the provisions of section 6(3B) of the Act where a family or joint family consist of more than five members belonging to all or any of the following categories, namely: minor son, widow of pre-deceased son where his or her mother is dead, such family shall be entitled to hold land in excess of the ceiling area to the extent of one fifth of the ceiling area for each member in excess of five; however, it had been prayed that an additional 1/5th unit be granted in respect of the land-holder lady's 6 unmarried daughters and that the benefit of the provisions of Section 18(1) of the Act be granted and the case be dropped, which cannot be accepted in any circumstances and that actually in the present case, land held by the land-holder was liable to be declared surplus; and remanded the matter.

4.1 Pursuant to the remand, the Mamlatdar & ALT found that earlier the Mamlatdar & ALT had

on the basis of the canal certificate issued in 1977, as per his order dated 24/1/1981 calculated the lands held by the petitioner to be equivalent to Acres 50-28 Gunthas of Jirayat land. That, the landholder was entitled to hold land equivalent to 36 acres of Jirayat land. The landholder was also entitled to an additional 1/5th Unit i.e. Acres 7-8 gunthas in respect of the minor son. In all, the landholder was entitled to hold land equivalent to Acres 43-08 gunthas of jirayat land and land equivalent to Acres 7-20 gunthas of jirayat land was required to be declared surplus. Accordingly, the Mamlatdar & ALT, by the impugned order dated 11th May 1987, declared Acres 4-04 gunthas of land held by the petitioner to be surplus land.

5. Being aggrieved by the aforesaid order dated 11th May, 1987, the petitioner carried the matter in appeal before the Deputy Collector, Olpad Division, Surat. Before the Deputy Collector, various contentions were raised on behalf of the petitioner, including the contention that the Mamlatdar & ALT had relied upon a certificate issued by the Irrigation Department, which formed the basis for declaring the land as surplus. That, such an

action was illegal as the said certificate was required to be proved in accordance with law. It was contended that the authority, who had issued the certificate, was not empowered to issue such a certificate and as such, the same was required to be cancelled. It was further contended that the lands situated in the command area of the canal could not be declared as surplus under the provisions of the Act.

6. The Deputy Collector, by the impugned order dated 6th June, 1988, upheld the order dated 11th May, 1987.

7. The petitioner carried the aforesaid order in revision before the Gujarat Revenue Tribunal (hereinafter referred to as “the Tribunal”). The Tribunal, by the impugned order dated 29th June, 1992, dismissed the Revision Application. Being aggrieved by the aforesaid orders, the petitioner has approached this Court by way of the present petition.

8. Heard Mr.R.N.Shah, the learned advocate on behalf of the petitioner and Mr.U.R.Bhatt, learned Assistant Government Pleader appearing on behalf of the respondent authorities.

9.The learned advocate for the petitioner submitted that, on the appointed day, the petitioner's family consisted of the petitioner, her five unmarried daughters and one son, and that, the petitioner was, therefore, entitled to retain at least two-fifth additional units, in which case, there would be no surplus land. Reliance was placed upon two decisions of this Court, namely, (1) *Nathekhan Sojalkhan Bihari v. Mamlatdar, Vadgam*, reported in 25(2) GLR 1473 and (2) *Chudasama Shambhaji Kalubha v. State of Gujarat*, reported in 26(2) GLR 824, to contend that the petitioner was entitled to hold one-fifth additional unit in respect of each family member in excess of five. That the total number of family members being seven, in view of the ratio laid down in the aforesaid decisions, the petitioner was entitled to retain two-fifth additional units.

10.It was further submitted that it was the case of the petitioner before the authorities that her son had attained the age of majority on the appointed day i.e. on 1-4-1976, and that, accordingly, the petitioner was entitled to retain two units of 36 acres each. That the authorities have wrongly discarded the evidence led by her and held that her son was a minor

and granted only one-fifth additional unit towards the minor son.

11.It was further submitted that, despite the fact that specific contention was raised before all the authorities that the canal certificate issued by the Irrigation Department which formed the basis for holding that the petitioner was holding land equivalent to Acres 50-28 gunthas of jirayat land, was not a valid certificate, as the same was obtained behind the back of the petitioner, and the petitioner was not given any opportunity of hearing prior to the issuance of such certificate and the same has not been considered or dealt with. It was urged that the said contention went to the root of the matter and non-consideration of the same, vitiated the said orders. In the circumstances, it was submitted that, in any event, there was no cause or reason for the authorities to hold that the petitioner was holding any surplus land, and that, therefore, the impugned orders are required to be quashed and set aside, and that, it is required to be held that the petitioner was not holding any surplus land.

12.Mr.U.R.Bhatt, the learned Assistant Government

Pleader has supported the orders passed by the authorities and submitted that the issues raised in the petition involve disputed questions of fact and as such, this Court, while exercising powers under Article 227 of the Constitution of India, should not entertain the petition. Accordingly, it was urged that the petition be rejected.

13.As can be seen from the impugned order of the Tribunal, the Tribunal even after holding that the petitioner has not produced any evidence like birth certificate from the Gram Panchayat or School Certificate in respect of her five daughters and son, has upheld the order of the lower authorities whereby one-fifth additional unit has been granted to the petitioner in respect of her minor son. In the circumstances, the issue as to whether the daughters were married or unmarried, pales to insignificance, as in any case, the authorities have accepted that the members of the petitioner's family consists of five daughters and her son i.e. in all there are seven members in the family.

14.The learned Advocate for the petitioner has placed strong reliance on the decisions of this

Court in the case of *Nathekhan Sojalkhan Bihari* (supra) and in the case of *Chudasama Shambhaji Kalubha* (supra), to contend that for every member of the family in excess of five, the petitioner was entitled to retain one-fifth additional unit. However, the said contention does not merit acceptance in view of the decision of the Apex Court in the case of State of Gujarat v. Jat Laxmanji Talasji, AIR 1988 SC 825, wherein the Court while concurring with the view taken by this Court in the case of Nathekhan (supra) has explained the position thus: “It needs to be clarified that on a true interpretation of the provision “each member in excess of five” must of logical necessity mean each `such' member of the specified handicapped category. In the present case, there were 8 members in the family and it comprised of three members of the specified category viz., 3 minor sons. Under the circumstances, for each minor son in excess of the five members the holder was entitled to 1/5th of the ceiling area in excess of the prescribed ceiling.” Accordingly, in the present case, there are seven members in the petitioner's family, which comprises of only one member of the specified category, viz., minor son. Hence, if the petitioner holds land in excess of the ceiling

limit, the petitioner would only be entitled to an additional 1/5th of the ceiling area for the minor son. In the circumstances, there is no infirmity in the orders passed by the lower authorities in holding that the petitioner would be entitled to only one-fifth additional unit.

15. However, the contention as regards the validity of the canal certificate merits acceptance. This certificate forms the basis for holding that the petitioner is holding land equivalent to Acres 50-28 gunthas of jirayat land. It is because of this finding that the petitioner is holding Acres 50-28 gunthas of land that the authorities have arrived at the conclusion that the petitioner is entitled to hold only one unit i.e. land equivalent to 36 acres of jirayat land and an additional one-fifth unit and is, thus, entitled to hold land equivalent to Acres 43-8 gunthas of jirayat land. If the aforesaid certificate is found to be invalid, the entire basis of the proceedings would fall. In the circumstances, it was incumbent upon the authorities to have considered the contentions raised by the petitioner in this regard in proper perspective. Non-consideration of the same

vitiates the said orders.

16.In the circumstances, the impugned orders, insofar as the same do not deal with the contentions as regards validity of the canal certificates, which have been relied upon by the authorities to arrive at the conclusion that the petitioner is holding the land equivalent to Acres 50-28 gunthas, are quashed and set aside and the matter is remanded to the Mamlatdar & Agriculture Land Tribunal, Ceiling, Kamrej, to decide the issue afresh in light of what is held hereinabove.

17.In the result, the petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

[HARSHA DEVANI, J.]

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